

**MINUTES OF THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

March 5, 1998

DIVISION ONE

B119582 Gahm et al. (Not for Publication)

V.

Superior Court, Los Angeles County
(Valley Dialysis Center, Inc., r.p.i.)

Therefore, let a peremptory writ issue, commanding respondent superior court to vacate its order of December 22, 1997, setting the trial date of June 28, 1998, and to issue a new and different order setting a trial date no later than April 22, 1998, in Los Angeles Superior Court case No. LC042993, entitled Herman Gahm et al. v. Valley Dialysis Center et al. This matter is final forthwith. All parties shall bear their own costs.

Spencer, P.J. Ortega, J. Vogel (Miriam A.), J.

B106324 People (Not for Publication)

V.

Regina Merceron

In B110969, the finding pursuant to Penal Code section 12022.5 that defendant used a firearm in the commission of count 1 (involuntary manslaughter) is stricken. With respect to both appeals, sentence is vacated and the matter is remanded for reconsideration of sentence in accordance with the views expressed in this opinion. In all other respects, the judgments are affirmed.

Masterson, J.

We concur: Ortega, Acting P.J.
Dunn, J. (Assigned)

March 5, 1998-Continued

DIVISION ONE (Continued)

B111015 People (Not for Publication)

V.

Ronald Dean Walker

The judgment is affirmed.

Masterson, J.

We concur: Spencer, P.J.

Ortega, J.

B106862 People (Not for Publication)

V.

Eunice Baham

The judgment is affirmed.

Masterson, J.

We concur: Spencer, P.J.

Ortega, J.

B113325 People (Not for Publication)

V.

John Holloway

The judgment is affirmed.

Masterson, J.

We concur: Spencer, P.J.

Dunn, J. (Assigned)

March 5, 1998-Continued

DIVISION ONE (Continued)

B112095 People (Not for Publication)
v.
Robert Lee Berry

The judgment is affirmed.

Masterson, J.

We concur: Spencer, P.J.
Vogel (Miriam A.), J.

B116295 People (Not for Publication)
v.
Jessie Gonzalez

The judgment is affirmed.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
Masterson, J.

DIVISION TWO

B108517 Robert F. Kennedy Medical Center
v.
State Department of Health Services, State of California

Filed order certifying opinion for publication.

B107545 People (Not for Publication)
v.
Mitchell

The Court:

The judgment is affirmed.

Boren, P.J., Fukuto, J., Zebrowski, J.

DIVISION TWO (Continued)

B108884 Gutierrez (Not for Publication)

v.
County of Los Angels, et al.

The judgment of dismissal is reversed. Plaintiff and appellant to recover costs on appeal. The matter is remanded for further proceedings not inconsistent with this opinion.

Zebrowski, J.

We concur: Fukuto, Acting P.J.
 Nott, J.

B098941 Fitzpatrick, et al. (Not for Publication)

v.
Civil Service Employees Insurance Co.

The judgment is affirmed.

Zebrowski, J.

We concur: Fukuto, Acting P.J.
 Nott, J.

B106826 People (Not for Publication)

v.
Bussey

The Court:

The findings on the prior conviction allegations and the sentence are vacated, and the matter is remanded for retrial by the court on the prior conviction allegations and for resentencing. In all other respects, the judgment is affirmed.

Boren, P.J., Nott, J., Zebrowski, J.

March 5, 1998-Continued

DIVISION TWO (Continued)

B106806 People (Not for Publication)
v.
Reed

The judgment is affirmed.

Zebrowski, J.

We concur: Boren, P.J.
 Fukuto, J.

DIVISION THREE

B112933 People (Not for Publication)
v.
Lester P.

The Court:

The order under review is affirmed.

Croskey, Acting P.J., Kitching, J., Aldrich, J.

B111769 People (Not for Publication)
v.
Anthony Martin

The judgment is affirmed.

Croskey, Acting P.J.

We concur: Kitching, J.
 Aldrich, J.

March 5, 1998-Continued

DIVISION THREE (Continued)

B109010 People (Not for Publication)
v.
Gary Lee Ruth

The judgment is affirmed, except that the trial court's order striking a qualifying prior felony conviction which respondent suffered pursuant to the Three Strikes law, and respondent's sentence, are vacated and the case is remanded for resentencing consistent with this opinion.

Croskey, Acting P.J.

I concur: Aldrich, J.

B111646 People (Not for Publication)
v.
David Cramer

The judgment is affirmed, except that the trial court's order staying the Penal Code section 667.5, subdivision (b) enhancement based on case No. NA015289 is vacated, the case is remanded, the trial court is directed to impose that enhancement, or strike it with a statement of reasons. The trial court is also directed to modify the precommitment credit awarded by awarding an additional 88 days conduct credit, for a total of 380 days precommitment credit. The trial court is further directed to prepare an amended abstract of judgment and to forward a certified copy thereof to the Department of Corrections.

Croskey, Acting P.J.

I concur: Kitching, J.

B105766 People (Not for Publication)
v.
Julius Bragg

The judgment is affirmed.

Croskey, Acting P.J.

I concur: Aldrich, J.

DIVISION THREE (Continued)

B107603 Helen DeLucas (Not for Publication)

v.
Ahavat Shalom Temple

The order appealed from is modified to delete defendant's claimed costs for obtaining plaintiff's medical records and x-rays (\$11,637.04) and, as modified, is affirmed on appeal. Costs on appeal to plaintiff.

Croskey, Acting P.J.

I concur: Kitching, J.

DIVISION FOUR

B104913 People (Not for Publication)

v.
Robinson

The judgment is affirmed.

Hastings, J.

We concur: Epstein, Acting P.J.
 Czuleger, J. (Assigned)

B106146 People (Not for Publication)

v.
Stroud

The judgment is affirmed.

Baron, J.

We concur: Epstein, Acting P.J.
 Hastings, J.

March 5, 1998-Continued

DIVISION SIX

B107630 Rodney F.
v.
Karen M.

(Certified For Publication)

Filed order modifying opinion. (No change in the judgment.)

DIVISION SEVEN

Court convened at 9:00 A.M.

Present: Lillie, P.J., Johnson, J., Woods, J., Neal, J., Simpson, J. (Assigned), and Emma Jean Amos, Deputy Clerk.

Each of the following:

B104071 People v. Mangram
B105521 People v. Centeno
B106082 People v. Pak
B106557 People v. Jimenes
B108257 People v. Lopez
B108715 People v. Gonzales
B108977 People v. Ball
B109945 People v. Santifer
B109957 People v. Wilson
B110548 People v. Ruiz
B111064 People v. Campbell
B111121 People v. Jackson
B111349 People v. Machado
B111690 People v. Shields
B111761 People v. Rathert
B112237 People v. Yount
B112386 People v. Stewart
B112575 People v. Encinas
B113080 People v. Garcia
B113446 People v. Soto
B117422 Jim O., v. D.C.F.S.
B117682 James S. v. D.C.F.S.
B107138 People v. Ariaza and Ramos
B118102 Lois G. v. D.C.F.S.
B107226 Rinaldi Convalescent v. Dept. of Health Services

Argument waived, cause submitted.

DIVISION SEVEN (Continued)

B111229 People
 v.
 Hupp

Merits:

Argued by Jeff Price for appellant. Joseph Lee, deputy attorney general appearing for respondent waives argument. Cause submitted.

B108873 People
 v.
 Jasmine N.

Merits:

Argued by Jacqueline Mangum for appellant and by Carl Henry, deputy attorney general, for respondent. Cause submitted.

B110987 People v. Demma
B116990 In re G. Demma on Habeas Corpus

Merits:

Argued by Jonathan Milberg for appellant and by Theresa Cochrane, deputy attorney general, for respondent. Cause submitted.

B095381 People
 v.
 Kelly

Merits:

Argued by Robert Boyce for appellant and by Alan Tate, deputy attorney general, for respondent. Cause submitted.

DIVISION SEVEN (Continued)

B113812 People
 v.
 Darryl M.

Merits:
Argued by Lisa Bassis for appellant and by Jeffrey Kahan, deputy attorney general, for respondent. Cause submitted.

B108785 People v. Nania
B113741 In re S. Nania on Habeas Corpus

Merits:
Argued by William Flenniken for appellant and by G. Tracey Letteau, deputy attorney general, for respondent. Cause submitted.

B103615 People
 v.
 Poarch

Merits:
Argued by Karen Landau for appellant and by Sunnie S. Lee, deputy attorney general, for respondent. Cause submitted.

B101519 People
 v.
 Perkins

Merits:
Argued by Elizabeth Missakian for appellant. Teresa Mann, deputy attorney general, appearing for respondent waives argument. Cause submitted.

DIVISION SEVEN (Continued)

B107701 People v. Ayala
B116858 In re D. Ayala on Habeas Corpus

Merits:

Argued by Gregory Ellis for appellant and by Theresa Cochrane, deputy attorney general, for respondent. Cause submitted.

B105911 Youssef
v.
Tookey

Appearances:

William A. Tookey, in propria persona waives argument and no appearance by appellant. In open court respondent given ten days to submit a judgment, thereafter the cause will be submitted.

B111462 Price
v.
Trafecanty

Merits:

Argued by Timothy Camarena for appellant and by J. Patrick Jacobs for respondent. Cause submitted.

B109697 Goldstein
v.
Fidler

Merits:

Argued by Neal Goldstein, in propria persona, for appellant and by Sandra Momotiuk for respondent. Cause submitted.

DIVISION SEVEN (Continued)

B115062 Sandoval
 v.
 Keese

Merits:

Argued by Niel M. Howard for appellant and by Ronald Kaplan for respondent.
Cause submitted.

B105662 Lawson
 v.
 Lawson

Merits:

Argued by Michael Lapidus for appellant and by David Leventhal for respondent. Cause submitted.

Court recessed at 12:00 p.m.

The Court reconvened at 2:00 P.M.

Present: Lillie, P.J., Johnson, J., Woods, J., Neal, J., Simpson, J. (Assigned), and Emma Jean Amos, Deputy Clerk.

B102748 Penalver
 v.
 Pace Membership Warehouse, Inc.

Merits:

Argued by Mark G. Bonino for appellants and by Julius Wachs for respondent.
Cause submitted.

B105173 Danso
 v.
 Casey

Merits:

Argued by Richard D. Rome for appellants and by Robert A. Gillon for respondent. Cause submitted.

DIVISION SEVEN (Continued)

B109548 Steele
 v.
 County of Los Angeles

Merits:
Argued by Vernetta Steele, in propria persona, and by Gene Girard for
respondent. Cause submitted.

B109690 Meadows Management Company
 v.
 United States Fidelity

Merits:
Argued by Mark Kremer for appellants and by Kenneth Crede for respondent.
Cause submitted.

B109793 Duncan-Williams
 v.
 GFC Capital

Merits:
Argued by John Hanover for appellant and by Lee Blackman for respondent.
Cause submitted.

B094146 People v. Taylor and Atlas
B103203 People v. Gonzalez

Each:
Oral argument continued to May 7, 1998, at 9:00 a.m.

B107741 People v. Jackson
B109763 People v. Perez

Each
Oral argument continued to April 2, 1998, at 9:00 a.m.

March 5, 1998-Continued

DIVISION SEVEN (Continued)

B099555 Miller
 v.
 Patitz

Merits:

Argued by James P. Kilty for appellant and by Heidi Hohler, Charles W. Cox and James Bates for respondents. Cause submitted.

B106279 Reddy
 v.
 Litton Industries, Inc.

Oral argument continued to April 2, 1998, 10:00 a.m.

B110664 Kutnyak
 v.
 Queen of Angels/Hollywood Presbyterian

Oral argument continued to March 6, 1998, at 2:00 p.m.

Court adjourned.

DIVISION SEVEN (Continued)

B100147 People v. King
B116108 King on Habeas Corpus

(Not for Publication)

The judgment of convictions is affirmed. The sentences on the convictions for counts 1, 2, 7, 10, 13-17 and 20-23 are vacated and remanded to the trial court for resentencing. On remand, the court must provide a statement of reasons for any consecutive terms imposed on these convictions. If the court decides to resentence defendant under 667.6, subdivision (c) and use section 667 as its basis to impose consecutive sentences, it must acknowledge it is exercising its discretion in sentencing consecutively rather than concurrently. The court must also provide a factual explanation supporting its finding of “separate occasions or not arising under the same operative facts” for each count, rather than an overall statement of the court’s general impressions of the evidence as to all convictions. The sentences are affirmed in all other respects.

With respect to King’s petition for a writ of habeas corpus, for the reasons set-forth in the foregoing opinion, the petition is denied as to the issue of King’s counsel’s failure to request a jury instruction on “photo-biasing.” Because we have remanded this matter for resentencing, the petition is moot as to the issue of counsel’s failure to object to the imposition of consecutive sentences.

Johnson, J.

I concur: Lillie, P.J.
I dissent: Woods, J.(Opinion)